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VIA HAND DELIVERY

June 5, 2000

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: *Dobson Communications Corporation--Ex Parte Communication, WT*
Docket No. 97-82.

Dear Ms. Salas:

Pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b), please find enclosed, on behalf of Dobson Communications Corporation ("Dobson") two copies of the above-referenced written *ex parte* presentation for inclusion in the public record. Any questions regarding this matter should be directed to the undersigned.

Sincerely,

WILKINSON BARKER KNAUER, LLP



By: Jeffrey S. Cohen

Enclosures

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Everett Dobson
CHAIRMAN
CHIEF EXECUTIVE OFFICER

May 31, 2000

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 - 12th Street, S.W., Room 8-B201
Washington, D.C. 20554

Re: *Ex Parte Communication*
Amendment of the Commission's Rules Regarding Installment Payment
Financing for Personal Communications Services (PCS) Licenses
WT Docket No. 97-82

Dear Mr. Chairman:

As the Chief Executive Officer of Dobson Communications Corporation ("DCC"), I have been following with great interest the Commission's activities in developing the rules and procedures that will govern the next PCS C and F Block reauction. Because DCC has a unique perspective on several of the issues that are being discussed in this context, I am writing to urge your consideration of four particularly important matters associated with this reauction, which are discussed in detail below.

Background. It may be useful, as background, for me to explain a bit of DCC's history. The initial elements of DCC were created by my grandfather, who began providing telephone service in a single wireline telephone exchange in western Oklahoma in 1939. The business was expanded by my father, who added rural exchanges and private line fiber networks, and initiated our foray into cellular service by obtaining three licenses to serve rural Oklahoma and Texas in 1990, and two additional rural Oklahoma area licenses in 1991. In 1995, having followed the several rule making proceedings creating the Personal Communications Services and the initial auctions for the MTA licenses, DCC made a strategic decision to expand its wireless capabilities through the acquisition, at auction, of PCS licenses primarily serving our core area in the Midwest, and expanding into other suburban/rural BTAs in other areas of the country. We spent substantial resources developing business plans and auction strategies for the C Block auctions, obtained commitments for venture financing needed to compete in the auction and develop wireless telecommunications networks, and qualified as a "small business Entrepreneur" in the original C Block PCS auction (Auction #5). Unlike many of the initial applicants in that (and subsequent) auctions, DCC was not "structured" to meet any control group or other tests needed to avoid attribution of "deep pocket" investors; as an operating small business entity, DCC qualified in its own right and based on its own financial attributes.

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Like many other entrepreneurs, DCC withdrew from the C Block auction when the bidding became economically irrational (DCC was successful in obtaining several F Block PCS licenses in the initial F Block auction (Auction #11)). Unlike many of the other unsuccessful bidders, however, DCC chose to pursue an alternative approach to the development of a wireless telecommunications business. Specifically, starting in 1996, and armed with the confidence and financial investment initiated for the PCS effort, DCC began a course of strategic acquisitions of rural cellular properties from initial A band lottery winners in Kansas, Missouri, Texas, Arizona, California, Maryland, Pennsylvania and Ohio, culminating in 1998 with our acquisition of eight markets from Sygnet Communications, and most recently, our acquisition, through a 50% interest in a joint venture with AT&T Wireless, of over thirty markets previously owned by American Cellular Corporation, which are being managed by DCC. DCC currently has wireless networks in operation in 18 states.

Earlier this year, we successfully completed an initial public offering of equity in our company (NASDAQ symbol: DCEL), and have a market capitalization of over \$2.5 billion, with gross revenues over the last three years averaging approximately \$175 million. In other words, DCC has achieved the type of internally generated growth in both assets and revenues that the Commission anticipated in Section 24.709(a)(3) of its rules for *successful* entrepreneur participants in its C and F Block auctions; we have simply done so primarily through rational bidding on, and development of, existing cellular properties, rather than irrational bidding on C Block properties.

The prospect of adding spectrum capacity through the upcoming reauction of Entrepreneur's Block spectrum is extremely exciting for DCC. As you have made clear in numerous speeches and interviews as Chairman of the Commission, there is a critical need to span the "digital divide" between urban areas and those areas of the country where population density has created broadband shortages. DCC is taking substantial steps to bring digital wireless capabilities to our rural and suburban markets (we recently announced a substantial purchase of equipment to provide network capabilities for its WAP (Wireless Application Protocol) products, and an agreement with GiantBear.com to provide content exchange and an information management portal for its customers as a prelude to creating a comprehensive wireless Internet offering). At this point, our most critical need is additional spectrum, and the PCS C and F Block spectrum appears to provide the most logical choice for creating these digital opportunities for our rural subscribers.

We are aware of the enormous activity that currently surrounds the potential reauctioning of so-called "Entrepreneurs Blocks" spectrum resulting primarily from the bankruptcies of several of the original high bidders. In fact, I recently visited with advisers to several of the Commissioners, including Mr. Fitzgerald of your office, and with members of the Wireless Telecommunications Bureau to discuss many of these issues, and their potential impact on a successful operating rural wireless carrier like DCC. The Commission's decisions on the issues discussed below will determine DCC's ability to participate effectively in the upcoming reauction, and to continue expanding the opportunities for providing advanced wireless telecommunications services to otherwise underserved areas of rural America.

As a successful entrepreneur who participated in the initial licensing of these channels, I feel it is incumbent upon the Commission to develop rules and processes that will allow companies like DCC to compete fairly and effectively for these licenses. In that regard, we have fundamental concerns about several

issues being considered in this proceeding that could effectively preclude us from obtaining licenses at their fair value, thus compounding the problems that we encountered in the initial C Block auction. I am therefore writing to you to ask your consideration on these matters in any public forum that may be held in developing the rules for the next Entrepreneur's Block auction:

Grandfathered Eligibility of Bidders in Original C Block Auction. Though this matter has been settled in two previous orders dealing with Entrepreneurs Block reactions, there is a continuing challenge to the grandfathered eligibility of participants in the initial C Block auction. The Commission's rules on this issue are clear; still, the Commission should reaffirm the policies underlying them.

DCC actively participated in the original auction of C Block licenses. When the prices bid in that auction went beyond levels that DCC felt were economically reasonable, DCC withdrew from the auction and pursued an alternative growth strategy involving acquisition of cellular properties. History has proven DCC's decisions to be the right one; most of the licenses that DCC originally sought have remain unused, with many "control group structured" licensees unable to raise the substantial capital needed to develop PCS networks, with several of the largest "auction winners" tied up in the bankruptcy proceedings that inevitably resulted from the gross overbidding that occurred.

DCC was ready in 1996 to put licenses won at reasonable values to immediate use in its business; having pursued an alternative approach, and having built a substantial wireless telecommunications network, DCC remains capable of putting this spectrum promptly to use in expanding its services to the marketplace. Section 24.709(a)(3) makes clear that "a licensee's . . . increased *gross revenues or increased total assets due to nonattributable equity* . . . , debt financing, revenue from operations or other investments, business development or expanded service shall not be considered" in determining whether a licensee has retained its eligibility for the required five-year period. And Section 24.709(b)(9) of the Commission's rules provides that "any entity that was eligible for and participated in [Auction #5] will be eligible to bid in any reaction of block C spectrum that begins within two years of the start date of the first reaction of C Block spectrum . . ." (i.e., until March 23, 2001). It is clear that the FCC anticipated that successful licensees could, through their internal development, grow beyond the limits of the Entrepreneur's Block, and that entities that were eligible, but unsuccessful in the auction, should not be prejudiced by their decision not to bid irrationally if they too grew beyond the Entrepreneur's Block limits through their internally generated operational development. This rule was applied by the Commission in the 1999 reaction of C, E and F Block licenses (Auction #22), and there is simply no reason why it should not also apply in the upcoming reaction, Auction #35.

Limiting Availability of Bidding Credits. While correctly concluding in the *Fourth Report and Order* that any bidder in the initial auction of C Block spectrum should retain its eligibility for the reaction, the Commission has determined that it will not make bidding credits available to entities whose assets and revenues as of the short-form application deadline exceed the eligibility limits for such benefits, even if those entities qualified for bidding credits in the initial auction. DCC — as well as other companies who have committed substantial effort and resources to building their wireless telecommunications networks and businesses since the initial C Block auctions — thus would be severely handicapped in bidding in the reaction against newly or recently created "small businesses" that are structured so as to have no operating

history or revenues, and therefore qualify for bidding credits.

Bidding credits were intended by the Commission to afford a leg-up for bidders with lesser financial capabilities. Some of these newly-created structured entities, however, are public companies with market capitalizations exceeding DCC's. Surely, allowing such companies to take advantage of bidding credits would not further any public purpose.

The history of the "designated entities" rules demonstrates that bidding credits are neither efficient nor reliable in assuring that licenses are awarded to those who value them most and can create the most efficient use of the spectrum. The primary problem has been crafting the eligibility definitions in a fashion that assures that bidding credits level the playing field for truly disadvantaged applicants who are, at the same time, capable of developing the spectrum that they are awarded. In fact, many of the auction winners to date are not truly disadvantaged "small businesses", but rather have been entities structured to take advantage of the credits. Those few truly "small businesses" who have been successful in the auctions have found that the wireless telecommunications business is extremely capital intensive, and they have been unable to raise the substantial capital needed to develop their businesses beyond the licensing. In sum, bidding credits have simply tended to skew auctions in favor of a few well-capitalized, structured applicants, some of whom are simply speculating in licenses.

In short, the Commission must rethink the advisability of allowing some Entrepreneurs to have bidding credits, while other eligible bidders will not. The result of such an approach will be the "structuring" of designated entities solely to capture these credits (and without regard to their ability to raise capital), while denying a fair bidding opportunity to pre-existing businesses who have demonstrated (as evidenced by their average revenue stream) a real ability to develop and operate successful wireless telecommunications enterprises. To ensure that entrepreneurial businesses are able to compete for some of the reauctoned spectrum, all entrepreneurs should be permitted to compete on a level playing field, without any bidding credits or other enhancements provided to any qualified entrepreneur.

If the Commission chooses to remove the eligibility restrictions on some portion of the Entrepreneur's Block, bidding credits may have some use in enabling entrepreneurs to compete against the giants of the industry. The capital costs and marginal cost structures available to large, well-funded entities who are likely to compete in an "open eligibility" auction makes it extremely difficult for any entrepreneur to compete for most licenses; for example, publicly traded companies like DCC (with a market capitalization of around \$2.5 billion), TeleCorp PCS (with a market capitalization near \$3 billion), Triton PCS (\$2.5 billion) or Leap Wireless (with a market capitalization of \$1.1 billion) still pale in comparison to corporations like VoiceStream (exceeding \$24 billion), Sprint PCS (exceeding \$50 billion), ALLTEL (near \$21 billion) or the AT&T Wireless Enterprises division (with a tracking stock market capitalization of \$66 billion), SBC Communications (over \$151 Billion) or Bell Atlantic, with its Verizon group (over \$82 billion). If the Commission believes that any leveling of the playing field is necessary, it should be between major companies and entrepreneurial businesses, and not between and among entrepreneurs. Bidding credits thus should be available only on any "open eligibility" licenses that are established from among the reauctoned C Block spectrum, and they should be available to any applicant that is eligible for Entrepreneur's Block licenses.

The C Block Spectrum Band Plan. Proposals are currently before the Commission to split the 30 MHz C Block licenses into three 10 MHz blocks or to create a 20 MHz/10 MHz split, with the 20 MHz licenses bundled with the 15 MHz C Block licenses in a nationwide “bulk bid.” In a perfect world, DCC would prefer that no change be made to the band plan. However, understanding that the Commission must balance competing interests, DCC recognizes that the *status quo* is not sustainable in the current environment. DCC therefore believes that splitting the C Block into three 10 MHz blocks (with some eligibility restrictions, as discussed below) will allow the Commission to strike the best balance between preserving opportunity for designated entities, enhancing competitive opportunities for all carriers, and placing C Block spectrum in the hands of parties who can put it to use quickly.

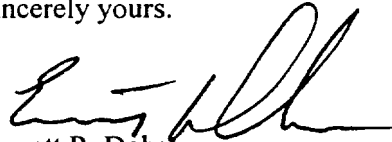
Some Eligibility Restrictions Must Be Maintained. The Commission is statutorily obligated under Section 309(j)(3) of the Communications Act to “disseminat[e] licenses among a wide variety of applicants.” We believe that the most effective way to accomplish these objectives in Auction #35 is to continue to restrict eligibility to entrepreneurs for a majority of the C Block, and all of the F Block, PCS licenses. As the Commission is well aware, the largest communications companies in the world are in a race to acquire as much spectrum as the law will allow, and (as evidenced in the UMTS auction in the United Kingdom); they seem willing to pay gargantuan sums to acquire licenses. Some have suggested that in an “open eligibility” auction, given the greater number of licenses available by splitting the C Block, and with the assistance of some bidding credits or other enhancements, entrepreneurs should be able to acquire a reasonable number of licenses.¹ We respectfully, but strongly, disagree. As the market capitalizations discussed above demonstrate, virtually no entrepreneur — not even an established rural wireless carrier like DCC — has a realistic chance to bid successfully in an open auction in competition with the giants of the telecommunications industry. Their access and cost of capital, and their marginal cost structures for the systems that they would ultimately develop, make it virtually impossible to create a reasonably comparable valuation process for entrepreneurs. It is therefore almost certain that these giants will be able to pay more, and in some cases substantially more, than a smaller entrepreneur. Since Congress has consistently made clear that auctions are not merely to be used to raise the largest amount of money, but rather to achieve other public policy objectives, it is essential for the Commission to set-aside some of the C Block spectrum in all of the Auction #35 markets as “Entrepreneurs’ Block” spectrum with restricted eligibility.

¹ See, e.g., Petition for Reconsideration (Expedited Action Requested) by U S WEST Wireless, LLC and Sprint Spectrum L.P. dba Sprint PCS, filed April 4, 2000, at p. 5.

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I truly appreciate this opportunity to make DCC's views known to you and appreciate your consideration of these very important issues.

Sincerely yours.

A handwritten signature in black ink, appearing to read 'Everett R. Dobson', with a stylized, flowing script.

Everett R. Dobson
Chairman and Chief Executive Officer
Dobson Communications Corporation

cc: The Honorable Susan Ness
The Honorable Michael K. Powell
The Honorable Harold W. Furchtgott-Roth
The Honorable Gloria Tristani
Christopher J. Wright
Thomas J. Sugrue
Kathleen O'Brien Ham
James D. Schlichting
Kelly Quinn
Audrey Bashkin